

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JOSE ALBERTO MACHADO ,

Case No. 3:25-cv-00079-MMD-CSD

Petitioner,

ORDER

v.

JOHN HENLEY, *et al.*,

Respondents.

Jose Alberto Machado submitted a pro se petition for writ of habeas corpus under 28 U.S.C. § 2254 and has now paid the filing fee. (ECF Nos. 4, 8.) The Court has reviewed the petition under Habeas Rule 4 and directs that it be served on Respondents.

A petition for federal habeas corpus should include all claims for relief of which Petitioner is aware. If Petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive petitions). If Petitioner is aware of any claim not included in his petition, he should notify the court as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

Machado has also submitted a motion for appointment of counsel. (ECF No. 5.) There is no constitutional right to appointed counsel in a federal habeas corpus proceeding. See *Luna v. Kernan*, 784 F.3d 640, 642 (9th Cir. 2015) (citing *Lawrence v. Florida*, 549 U.S. 327, 336-37 (2007)). An indigent petitioner may request appointed counsel to pursue habeas relief. See 18 U.S.C. § 3006A(a)(2)(B). The decision to appoint counsel is generally discretionary. See *id.* § 3006A(a)(2) (authorizing appointment of counsel “when the interests of justice so require”). However, counsel is appropriate if the

1 complexities of the case are such that denial of counsel would amount to a denial of due
2 process and where the petitioner is so uneducated that he is incapable of fairly presenting
3 his claims. *See LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987); *see also Brown v.*
4 *United States*, 623 F.2d 54, 61 (9th Cir. 1980). Here, a jury convicted Machado of sexual
5 assault and sentenced him to ten years to life in prison. (ECF No. 4 at 2.) But his petition
6 appears to set forth his two claims with sufficient clarity. Machado merely states that he
7 is untrained in the law and in legal research and notes that another inmate assisted him
8 in preparing his petition. He hasn't shown that counsel is necessary to ensure due
9 process. The Court concludes that counsel is not warranted and denies the motion.

10 It is therefore ordered that the Clerk of Court detach, file, and electronically serve
11 the petition (ECF No. 4) on Respondents.

12 It is further ordered that that the Clerk add Aaron D. Ford, Nevada Attorney
13 General, as counsel for Respondents and provide Respondents with an electronic copy
14 of all items previously filed in this case by regenerating the Notice of Electronic Filing to
15 the Office of the Attorney General only.

16 It is further ordered that Petitioner's motion for counsel (ECF No. 5) is denied
17 without prejudice.

18 It is further ordered that Respondents file a response to the petition, including
19 potentially by motion to dismiss, within 90 days of service of the petition, with any requests
20 for relief by Petitioner otherwise subject to the normal briefing schedule under the local
21 rules. Any response filed must comply with the remaining provisions below are entered
22 under Habeas Rule 5.

23 It is further ordered that any procedural defenses raised by Respondents be raised
24 together in a single consolidated motion to dismiss. In other words, the Court does not
25 wish to address any procedural defenses raised herein either in seriatum fashion in
26 multiple successive motions to dismiss or embedded in the answer. Omitted procedural
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1 defenses will be subject to potential waiver. Respondents should not file a response that
2 consolidates their procedural defenses, if any, with their response on the merits, except
3 under 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
4 Respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they will
5 do so within the single motion to dismiss not in the answer; and (b) they will specifically
6 direct their argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett*
7 *v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses,
8 including exhaustion, should be included with the merits in an answer. All procedural
9 defenses, including exhaustion, instead must be raised by motion to dismiss.

10 It is further ordered that, in any answer filed on the merits, Respondents specifically
11 cite to and address the applicable state court decision and record materials, if any,
12 regarding each claim.

13 It is further ordered that Petitioner has 45 days from service of the answer, the
14 motion to dismiss, or other response to file a reply or opposition, with any other requests
15 for relief by Respondents otherwise being subject to the normal briefing schedule under
16 the local rules.

17 It is further ordered that any additional state court record exhibits filed herein by
18 Petitioner or Respondents be filed with a separate index of exhibits identifying such by
19 number. The parties will identify filed CM/ECF attachments by the number of the exhibit
20 in the attachment. Each exhibit must be filed as a separate attachment.

21 It is further ordered that the parties send courtesy copies of any responsive
22 pleading or motion and all indices of exhibits only to the Reno Division of the Court.
23 Courtesy copies must be mailed to the Clerk of Court, 400 S. Virginia St., Reno, NV,
24 89501 and directed to the attention of "Staff Attorney" on the outside of the mailing
25 address label. No further courtesy copies are required unless and until requested by the
26 Court.

1 DATED THIS 2nd Day of June 2025.

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4 MIRANDA M. DU
5 UNITED STATES DISTRICT JUDGE
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